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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
New York, 10-21 August 1992

FINAL DRAFT PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL SEABED AUTHORITY

Working paper by the Secretariat

Whereas the United Nations Convention on the Law of the Sea provides for the establishment of the International Seabed Authority;*

Whereas article 176 of the United Nations Convention on the Law of the Sea provides that the Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 177 of the United Nations Convention on the Law of the Sea provides that the Authority shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes;

Recognizing that, in accordance with article 182 of the United Nations Convention on the Law of the Sea, representatives of States Parties and officials of the Authority shall similarly enjoy in the territory of each State Party such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Authority;

Consequently the Assembly, by a resolution adopted on the _____, approved the following Protocol on the Privileges and Immunities of the International Seabed Authority and proposed it for accession by each State Party.

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* Articles or parts thereof indicated by asterisks have been provisionally adopted.

Article 1*

Use of terms

For the purposes of this Protocol:

(a) "Convention" means the United Nations Convention on the Law of the Sea;

(b) "Protocol" means the Protocol on the Privileges and Immunities of the International Seabed Authority;

(c) "Authority" means the International Seabed Authority as provided for in the Convention;

(d) "States Parties" has the same meaning as defined in article 1 of the Convention;

(e) "Acceding State" means a State Party that is a Party to this Protocol;

(f) "Secretary-General" means the Secretary-General of the International Seabed Authority or his authorized representative;

(g) "Officials of the Authority" means the Secretary-General and all members of the staff of the Authority, including employees of the Enterprise, except those who are locally recruited and assigned to hourly rates;

(h) "Enterprise" means the Enterprise, the organ of the Authority as provided for in the Convention;

(i) "Director-General" means the Director-General of the Enterprise;

(j) "Representatives of Member States" means delegates, deputy delegates, advisers and any other members of delegations;

(k) "Observer State" means a State which enjoys observer status with the Authority;

(l) "Representatives of observer States" means delegates, deputy delegates, advisers and any other members of delegations;

(m) "Experts" means experts performing missions for the Authority;

(n) "Archives" includes records and correspondence, documents, manuscripts, maps, still and moving pictures, films and sound recordings belonging to or held by the Authority.

Article 2*

General provision

Without prejudice to the provisions of the Convention, each acceding State shall accord to the Authority and its organs, the representatives of acceding States, of States Parties and of observer States, officials of the Authority and experts such privileges and immunities as specified in this Protocol.

Article 3*

Legal personality and capacity of the Authority

The Authority shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes in accordance with the Convention; consequently it has, in particular, the capacity: 1/

(a) To contract;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings.

Article 4*

Inviolability of the premises of the Authority

The premises of the Authority shall be inviolable.

Article 5*

Immunity and exemptions of the Authority, its property and assets

1. The Authority, its property and assets, shall enjoy immunity from legal process except to the extent that the Authority expressly waives this immunity in a particular case. 2/ It is, however, understood that no waiver of immunity shall extend to any measure of execution.

1/ Article 176.

2/ Article 178.

2. The property and assets of the Authority, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action. 3/

3. The property and assets of the Authority shall be exempt from restrictions, regulations, controls and moratoria of any nature. 4/

Article 6*

Inviolability of archives

The archives of the Authority, wherever located, shall be inviolable. 5/

Article 7*

Financial facilities of the Authority

1. Without being subject to any financial controls, regulations or moratoria of any kind, the Authority may freely:

(a) Purchase any currencies through authorized channels and hold and dispose of them;

(b) Hold funds, securities, gold or currency of any kind and operate accounts in any currency;

(c) Transfer its funds, securities, gold or currency from one country to another or within any country and convert any currency held by it into any other currency.

2. The Authority shall, in exercising its rights under paragraph 1 of this article, pay due regard to any representations made by the Government of any Member State in so far as effect can be given to such representations without detriment to the interests of the Authority.

3/ Article 179.

4/ Article 180.

5/ Article 181 (1).

Article 8*

Exemption from taxes and customs duties

1. Within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by the Convention, shall be exempt from all direct taxation, and goods and publications imported or exported for its official use shall be exempt from all customs duties, prohibitions and restrictions. The Authority shall not claim exemption from taxes which are no more than charges for services rendered. 6/

2. When purchases of goods or services of substantial value necessary for the official activities of the Authority are made by or on behalf of the Authority, and when the price of such goods or services includes taxes or duties, appropriate measures shall, to the extent practicable, be taken by Member States to grant exemption from such taxes or duties or provide for their reimbursement.

3. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the Member State which granted the exemption, except under conditions agreed with that Member State. 7/

Article 9*

Communications facilities

1. For the purposes of its official communications, the Authority shall enjoy as far as is compatible with international agreements, regulations and arrangements in the territory of each Member State treatment at least as favourable as that which is accorded to international organizations in the matter, inter alia, of priorities, rates and taxes applicable to mail and different forms of telecommunications.

2. No censorship shall be applied to the official correspondence and other official communications of the Authority.

3. The Authority shall have the right to use codes and to dispatch and receive its correspondence and other official communications by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

6/ Article 183 (1).

7/ Article 183 (2).

4. Nothing in this article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a Member State and the Authority.

Article 10*

Legal capacity of the Enterprise

The Enterprise shall, within the framework of the international legal personality of the Authority, have such legal capacity, in accordance with the Convention, as is necessary for the exercise of its functions and the fulfilment of its purposes and, in particular, the capacity:

(a) To enter into contracts, joint arrangements or other arrangements, including agreements with States and international organizations;

(b) To acquire, lease, hold and dispose of immovable and movable property;

(c) To be a party to legal proceedings. 8/

Article 11*

Position of the Enterprise with regard to judicial process

1. Actions may be brought against the Enterprise only in a court of competent jurisdiction in the territory of a Member State in which the Enterprise:

(a) Has an office or facility;

(b) Has appointed an agent for the purpose of accepting service or notice of process;

(c) Has entered into a contract for goods or services;

(d) Has issued securities; or

(e) Is otherwise engaged in commercial activity. 9/

8/ Annex IV, article 13 (2).

9/ Annex IV, article 13 (3) (a).

2. The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise. 10/

Article 12*

Immunity of the property and assets of the Enterprise

1. The property and assets of the Enterprise, wherever located and by whomsoever held, shall be immune from requisition, confiscation, expropriation or any other form of seizure by executive or legislative action. 11/

2. The property and assets of the Enterprise, wherever located and by whomsoever held, shall be free from discriminatory restrictions, regulations, controls and moratoria of any nature. 12/

Article 13* (14) 13/

Rights, privileges and immunities of the Enterprise

1. Member States shall ensure that the Enterprise enjoys all rights, privileges and immunities accorded by them to entities conducting commercial activities in their territories. These rights, privileges and immunities shall be accorded to the Enterprise on no less favourable a basis than that on which they are accorded to entities engaged in similar commercial activities. If special privileges are provided by Member States for developing States or their commercial entities, the Enterprise shall enjoy those privileges on a similarly preferential basis. 14/

2. Member States may provide special incentives, rights, privileges and immunities to the Enterprise without the obligation to provide such incentives, rights, privileges and immunities to other commercial entities. 15/

10/ Annex IV, article 13 (3) (b).

11/ Annex IV, article 13 (4) (a).

12/ Annex IV, article 13 (4) (b).

13/ The numbers in parentheses indicate the place of the article in document LOS/PCN/WP.49.

14/ Annex IV, article 13 (4) (d).

15/ Annex IV, article 13 (4) (e).

Article 14* (15)

Exemption from direct and indirect taxation

The Enterprise and the Member States in which its offices and facilities are located shall negotiate special agreements concerning the exemption of the Enterprise from direct and indirect taxation. 16/

Article 15* (16)

Financial facilities for the Enterprise

1. The Enterprise shall have the power to borrow funds and to furnish such collateral or other security as it may determine. Before making a public sale of its obligations in the financial markets or currency of a Member State, the Enterprise shall obtain the approval of that Member State. 17/

2. Member States shall make every reasonable effort to support applications by the Enterprise for loans on capital markets and from international financial institutions. 18/

3. Except as provided in paragraph 1 of this article, Member States shall not maintain or impose restrictions on the holding, use or exchange of the funds made available to the Enterprise. 19/

Article 16* (17)

Waiver of immunity by the Enterprise

The Enterprise may waive any of the privileges and immunities conferred under this Protocol or in special agreements provided for in article 27 to such extent and upon such conditions as it may determine. 20/

16/ Annex IV, article 13 (5).

17/ Annex IV, article 11 (2) (a).

18/ Annex IV, article 11 (2) (b).

19/ Annex IV, article 11 (3) (g).

20/ Annex IV, article 13 (7).

Article 17* (18)

Privileges and immunities of the representatives of Member States and of observer States

1. Representatives of acceding States, of States parties and of observer States attending meetings convened by the Authority, shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy in the territory of each acceding State the following privileges and immunities:

(a) Immunity from legal process in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned may have ceased to exercise their functions;

(b) Immunity from personal arrest or detention and the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;

(c) Inviolability of all papers and documents;

(d) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) Exemption with respect to themselves, their spouses and dependent members of their families from immigration restrictions, alien registration requirements and national service obligations;

(f) The same privileges and facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same protection and repatriation facilities with respect to themselves, their spouses and dependent members of their families as are accorded to diplomatic agents in time of international crises;

(h) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Member States attending the meetings of the Authority are present in a Member State for the discharge of their duties shall not be considered as periods of residence.

3. Privileges and immunities are accorded to the representatives of Member States and of observer States, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their

functions in connection with the Authority. Consequently, a Member State or an observer State not only has the right but is under a duty to waive the immunity of its representative in any case where, in the opinion of that State, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

4. The provisions of paragraphs 1 and 2 are not applicable as between a representative and the authorities of the Member State or of the observer State of which he is a national or of which he is or has been a representative.

Article 18* (19.1, 2)

Privileges and immunities of officials of the Authority

1. The Secretary-General will specify the categories of officials to which the provisions of this article shall apply. He shall submit those categories to the Assembly. Thereafter the categories shall be communicated to the Governments of all Member States. The names of the officials included in the categories shall from time to time be made known to the Governments of Member States.

2. Officials of the Authority, regardless of their nationality, shall enjoy the following privileges and immunities:

(a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned may have ceased to be officials of the Authority;

(b) Immunity from personal arrest or detention in relation to acts performed by them in their official capacity;

(c) Immunity from inspection and seizure of personal and official baggage, except in cases of flagrante delicto. In such cases the competent authorities shall immediately inform the Secretary-General. Inspections shall in the case of personal baggage be conducted only in the presence of the official concerned or his authorized representative, and in the case of official baggage, in the presence of the Secretary-General;

(d) Exemption from taxation in respect of the salaries and emoluments paid or any other form of payment made by the Authority;

(e) Immunity from national service obligations;

(f) Exemption with respect to themselves, their spouses and dependent members of their families from immigration restrictions and alien registration requirements;

(g) The same privileges and facilities in respect of foreign exchange, including holding accounts in foreign currencies, as are accorded to members of comparable rank of diplomatic missions;

(h) The same protection and repatriation facilities with respect to themselves, their spouses and dependent members of their families as are accorded to diplomatic agents in time of international crises;

(i) The right to import free of duty their furniture, household and personal effects at the time of first taking up their post in the country in question and, after the conclusion of their mission, to re-export the same free of duty to their country of domicile.

Article 19* (19.4)

Additional privileges and immunities of the Secretary-General and other senior officials of the Authority

In addition to the privileges and immunities specified in article 18, the Secretary-General, the Director-General and their deputies, their spouses and dependent members of their families shall be accorded the same privileges and immunities as are accorded to diplomatic agents in accordance with international law.

Article 20* (19.3)

Waiver of immunity of the officials of the Authority

Privileges and immunities are granted to the officials of the Authority in the interest of the Authority and not for their own personal benefit. The Secretary-General shall have the right and duty to waive the immunity granted to an official of the Authority whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Authority. In the case of the Secretary-General and the Director-General, the Council shall have the right to waive the immunity.

Article 21* (20)

Privileges and immunities of experts

1. Experts, other than the officials of the Authority, while performing the functions assigned to them by the Authority or in the course of their travel to take up these functions or perform these duties, shall enjoy the following facilities, privileges and immunities that are necessary for the effective exercise of their duties:

(a) Immunity from legal process in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned may have ceased to exercise their functions with the Authority;

(b) Immunity from personal arrest or detention in relation to acts performed by them in their official capacity;

(c) Immunity from inspection and seizure of personal and official baggage, except in cases of flagrante delicto. In such cases the competent authorities shall immediately inform the Secretary-General. Inspection shall in the case of personal baggage be conducted only in the presence of the official concerned or his authorized representative, and in the case of official baggage, in the presence of the Secretary-General;

(d) Exemption from taxation in respect of the salaries and emoluments paid or any other form of payment made by the Authority;

(e) Inviolability of all papers and documents;

(f) The right, for the purposes of all communications with the Authority, to use codes and to dispatch or receive papers, correspondence or other official material by courier or in sealed bags;

(g) Exemption with respect to themselves, their spouses and dependent members of their families from immigration restrictions, alien registration requirements and national service obligations;

(h) The same protection and repatriation facilities with respect to themselves, their spouses and dependent members of their families as are accorded to diplomatic agents in time of international crises;

(i) The same privileges and facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

2. Privileges and immunities are granted to experts in the interests of the Authority and not for their own personal benefit. The Secretary-General shall have the right and duty to waive the immunity granted to an expert whenever, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Authority.

Article 22*

Cooperation with the competent authorities

The Authority shall cooperate at all times with the competent authorities of Member States to facilitate the proper administration of justice, secure the observance of police regulations and avoid the occurrence of any abuse in

connection with the facilities, privileges and immunities mentioned in this Protocol.

Article 23*

Respect for the laws and regulations of Member States

Without prejudice to the privileges and immunities accorded by this Protocol, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Member States. They also have the duty not to interfere in the internal affairs of Member States.

Article 24* (23)

Abuse of privileges or immunities

1. If any Member State considers that there has been an abuse of a privilege or immunity conferred by this Protocol, consultations shall be held between that State and the Secretary-General to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to that State and the Secretary-General, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with article 29.

2. Representatives of Member States and of observer States attending meetings convened by the Authority, while exercising their functions and during their journeys to and from the Authority, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country, provided that:

(a) Representatives of Member States and of observer States or persons who are entitled to the immunities provided in article 19 shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic agents accredited to that country;

(b) In the case of an official of the Authority to whom article 19 is not applicable, no order to leave the country shall be issued by the territorial authorities other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the Secretary-General; and, if expulsion proceedings are taken against an official of the Authority, the Secretary-General shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 25* (24)

Laissez-passer+

1. Officials of the Authority shall be entitled to use laissez-passer.

2. Each Member State shall recognize and accept laissez-passer issued to officials of the Authority as valid travel documents.

3. Applications for visas, where required, from the officials of the Authority holding laissez-passer, when accompanied by a certificate that they are travelling on the business of the Authority, shall be dealt with as speedily as possible. In addition such persons shall be granted facilities for speedy travel.

4. Similar facilities to those specified in paragraph 3 shall be accorded to experts and other persons who, though not holders of laissez-passer, have a certificate that they are travelling on the business of the Authority.

Article 26* (25)

Flag and emblem

The Authority shall be entitled to display its flag and emblem in its premises and on vehicles used for official purposes.

Article 27* (26)

Special agreements applicable to the Enterprise

The provisions of this Protocol applicable to the Enterprise may be supplemented by special agreements concluded between the Enterprise and the Member States in accordance with Annex IV, article 13, paragraph 1, of the Convention.

Article 28* (28, 29)

Supplementary agreements

This Protocol shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded to the Authority by any State by reason of the location in the territory of the State of the

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+ It should be noted that the relationship between the Authority and the United Nations has not yet been considered.

Authority's Headquarters or regional centres or offices. This Protocol shall not be deemed to prevent the conclusion between the Authority and any Member State of supplementary agreements.

Article 29 (29, 30)

Settlement of disputes

1. The Authority shall make suitable provisions for the proper settlement of:

(a) Disputes arising out of contracts, or other disputes of a private character to which the Authority is a party;

(b) Disputes involving an official of the Authority or any person who by reason of his official position enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Authority and a Member State concerning the interpretation or application of the Protocol or any supplementary agreement or any difference arising between the Authority on the one hand and a Member State on the other hand, which is not settled by consultation, negotiation or other agreed mode of settlement within three months following such a request by one of the parties to the dispute, shall be referred, at the request of either party to the dispute, for a final and binding decision to a panel of three arbitrators: one to be nominated by the Secretary-General, one to be nominated by the Member State. If either or both of the nominations are not made within three months following the request for arbitration, the President of the International Tribunal for the Law of the Sea shall proceed to make the appointment. The third arbitrator, who shall be the chairman of the parel, shall be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the nomination or appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Tribunal for the Law of the Sea at the request of the Authority or the Member State.

Article 30* (30, 31)

Final provisions

1. This Protocol shall be submitted to every State Party for accession.

2. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations who shall promptly transmit a copy thereof to the Secretary-General. The Protocol shall come into force as regards each State Party on the date of deposit of each instrument of accession.

3. The Secretary-General of the United Nations shall inform all States Parties of the deposit of each instrument of accession.

4. It is understood that, when an instrument of accession is deposited on behalf of any State Party, the State Party shall be in a position under its own law to give effect to the terms of the Protocol.

5. This Protocol shall continue in force as between the Authority and every State Party which has deposited an instrument of accession for as long as that Member State remains a State Party to the United Nations Convention on the Law of the Sea, or until a revised Protocol has been approved by a meeting of States Parties and that Member State has become a party to the revised Protocol.

6. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.